

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

IN RE: MICHAEL ADAM ARELLANO

Case No. 16-12720-t7

DEBTOR.

Chapter 7

MICHAEL ADAM ARELLANO,
Plaintiff

v.

Adversary No. _____

ANTHONY DENARDIS,
Defendant.

COMPLAINT SEEKING TURNOVER OF PROPERTY
PURSUANT TO 11 U.S.C. SECTION 542 AND FOR
SANCTIONS FOR VIOLATIONS OF 11 U.S.C. SECTION 362

1. On October 31, 2016, Plaintiff filed for relief under Chapter 7 of the U.S. Bankruptcy Code. The Court has jurisdiction over this proceeding under 28 U.S.C. § 1334. This is a core proceeding

2. On August 25, 2016, Defendant Anthony DeNardis was awarded a Judgment of \$8127.00, in Case No. T-4-CV-2016-005880. A Writ of Garnishment was filed on August 26, 2016 to Wells Fargo Bank and on September 21, 2016, Debtor's accounts ending in 4498 and 8300 were garnished in the amounts of \$8127.00.

3. The garnishment occurred within the 90 day Preference Period.

4. Since the filing of the bankruptcy, Plaintiff has demanded the return of the \$8127.00

"Property", on numerous occasions, including, but not limited to, the following:

- a. Initial Demand letter was sent to 8901 Paramount Ct. NE, Albuquerque, NM, 87122 on November 16, 2016 via USPS Certified mail article no. ending 4498, notice was left by USPS, but item was never picked up. ***See Exhibit A***,

b. 2nd Demand letter was sent to the same address as above on December 2, 2016, via USPS First Class and Certified mail, article no. ending 2972, and shows item as “in transit” as of December 30, 2016; Hand-delivery was also attempted on same day, but Defendant wouldn’t open door, letter was left in door jam. ***See Exhibit B.***

c. Final Demand letter was mailed on December 15, 2016 to Elite 7900 Lomas Blvd. NE #C, Albuquerque, NM 87110, via USPS Certified mail, article no. ending 9635 and was delivered and signed for on December 19, 2016 at 10:46 a.m., in addition to an attempted hand-delivery at the same address, ***See Exhibit C.*** Our courier was advised Defendant did not work at location.

d. Defendant was successfully contacted on December 15, 2016, via telephone, by ABL’s courier, Mr. De La Pena, to advise him of ABL’s efforts to hand-deliver him a letter. Defendant stated he would not accept the letter, he was aware of what the letter was regarding then he stated he had an attorney and we could deliver the letter to him. When asked who his attorney was, he hung up. Several attempts to contact him were made but he did not answer phone again. ***See, Exhibit D.***

5. The Defendant has failed and refused to return the Property in violation of 11 U.S.C. §362. The Defendant has knowledge of the Chapter 7 case and acted in total disregard of 11 U.S.C. §362 by failing to return the Property.

6. As a result of Defendant’s unlawful possession, Debtor has been required to incur attorney’s fees for prosecution of this action. Debtor requests an award of expenses incurred as a result of Defendant’s unlawful action including, necessary and reasonable attorney’s fees.

WHEREFORE, Plaintiff prays that this Court:

- a. Order the Defendant to pay the Debtor \$8127.00;
- b. Find that Defendant is in contempt of this Court for violating 11 U.S.C. §362;
- c. Award Plaintiff, pursuant to U.S.C. §362 and 11 U.S.C. §105(a), costs and expenses incurred as a result of Defendant’s unlawful action, including reasonable attorney’s fees for prosecution of this adversary proceeding; and
- d. Order such other relief as is just and proper.

Respectfully Submitted,

Albuquerque Business Law, P.C.

/s/ James T. Burns "electronically submitted"

James T. Burns

Counsel for Debtor/Plaintiff

1803 Rio Grande Blvd NW Suite B

Albuquerque, NM 87104

(505) 246-2878/(505) 246-0900—facsimile

james@abqbizlaw.com

efile@abqbizlaw.com